

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24653)	
DONALD A. AND ANNE P. LONG)	Decision: D1561
Applicants)	Source : Unnamed Streams
ROBERT B. LONG, ET AL.)	County : Napa
Protestants)	

DECISION APPROVING APPLICATION 24653 IN PART

BY THE BOARD:

Donald A. and Anne P. Long having filed Application 24653 for a permit to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the evidence received at the investigation having been duly considered; the Board finds as follows:

Substance of Application

1. Application 24653 is for a permit to appropriate water from 3 unnamed streams tributary to Lake Hennessey in Napa County. The applicants propose to divert 2.2 cubic feet per second (cfs) from May 1 to October 1 for irrigation and 1600 gallons per day (gpd) from January 1 to December 31 for domestic purposes from a point located in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 7, T7N, R4W, MDB&M. The applicants also propose to collect 33 acre-feet per annum (afa) from November 1 to May 1 in two onstream reservoirs for irrigation, recreation, and fire protection. Reservoir I is to be located in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 7, T7N, R4W, MDB&M, and Reservoir II is to be located in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 12, T7N, R5W, MDB&M.

Applicant's Project

2. The applicants propose to construct two earth dams 24 feet high forming two reservoirs on two unnamed streams with surface areas of about five acres and six acres, and capacities of about 15 acre-feet and about 18 acre-feet. Water will also be pumped by direct diversion from the third source stream at Diversion Point No. 1 and to offstream storage through 4,200 feet of four-inch plastic pipe to the two reservoirs. The water is to be used for domestic use and irrigation of 300 acres of vineyard. No features of the project have been constructed. After the rainy season nearly all of the flow of the stream on which Diversion Point No. 1 is to be located originates in a spring area in the stream channel. It is proposed to install the pump at Diversion Point No. 1 at the spring.

Protests

3. Robert and Edith Long, dba Azalea Springs; William and Sally Elledge, Charles B. See, City of Napa and Connecticut Mutual Insurance Company all protested the application on the basis of possible injury to vested rights. The Elledge protest has been withdrawn.

4. Protestants Long claim the proposed diversion will interfere with use of water under their licensed Application 22458 for irrigation of two acres of vineyard and their claim of riparian right. Protestants Long also irrigate 16 acres of vineyard under approved Application 24757 by diversion from the same stream. This application is junior to Application 24653. Protestants Long's two diversion points are a short distance downstream from Applicant Long's proposed point of direct diversion where he plans to install his pump. Protestants Long depend on the spring flow for their water supply under their license and permit. Protestants Long contend that the spring identified in Application 24653 as Diversion Point No. 1 is on their property, and that the applicants are without right of access to that point. The true ownership of the land at that point is in dispute. Applicant Long must present proof of legal ownership of land at Diversion Point No. 1 or legal right of access to that point before constructing his diversion works.

5. Protestant See claims the proposed diversion would divert water to which he has prior right; namely his claim of riparian right, and permitted Applications 23308 and 24018.

6. The City of Napa protested the storage portion of Application 24653 based on injury to its rights under permitted Application 10990 for operation of Lake Hennessey on Conn Creek. The City states that since the applicants' storage season coincides with the City's storage season, and the project is upstream from the City's reservoir, it will deprive the City of water to which it is entitled. The City asks that any permit issued on the application require release of water stored during the current storage season if Lake Hennessey does not fill. The record shows that Lake Hennessey fills at least four out of five years.

7. Connecticut Mutual Insurance Company claims rights on Conn Creek below Lake Hennessey and states that a permit should not be issued on the application until recent court rulings in People v. Alfred F. Forni, et al., and subsequent negotiations have been finalized, and it is determined that sufficient water is available. The litigation referred to is final, and diversion of water proposed in Application 24653 is not in conflict.

Availability of Unappropriated Water

8. Board Decisions 836, 1136, 1138, and 1279 all approved applications for appropriation of water from various tributaries to Lake Hennessey.

9. Decision 836 found that the prime consideration for the protection of water users downstream from Lake Hennessey was the maintenance of groundwater levels. The decision concluded that since the construction of Conn Dam, groundwater levels have been rising. It was later determined that the limited area of irrigable land in the watershed above Lake Hennessey apparently assures that the magnitude of future direct diversion applications above Lake Hennessey will not be great enough to cause significant depletion of streamflow to that reservoir. Protestants See and Connecticut Mutual Insurance Company are supplied

water from the groundwater basin that is maintained by releases from Lake Hennessey.

In 1978 an Agreement for Adjustment and Settlement of Water Rights was entered into by the City of Napa, Department of Fish and Game, and Conn Creek water users. The agreement, in part, defines the way in which the City is to operate Lake Hennessey so as to release water to satisfy the riparian rights of the Conn Creek water users. The State Water Resources Control Board has approved this agreement. One provision of the agreement requires the City to release all inflow to Lake Hennessey between May 1 and October 31. Investigation of the stream on which Diversion Point No. 1 is located indicates that the low flow of the stream, coupled with diversion from the stream by Protestant Long under licensed Application 22458, entirely depletes the flow so that there is no hydraulic continuity with Lake Hennessey during the irrigation season. Thus, summer direct diversion under Application 24653 will not be adverse to the Conn Creek water users, including Protestants See and Connecticut Mutual Insurance Company. Further, summer diversion will not be adverse to the City of Napa since Lake Hennessey storage season does not include the summer months.

10. Recent winter storage applications above Lake Hennessey have been approved subject to a term requiring reservoir outlet pipes and to a requirement that the reservoirs release all water collected to storage in years that Lake Hennessey does not fill. These same terms should be imposed on any permit issued on Application 24653.

11. Analysis of the watershed tributary to the unnamed stream on which Protestant Long's diversion and Applicant Long's diversion Point No. 1 are located, together with actual streamflow measurements indicates that the flow of the stream after the end of the winter rainy season is rarely in excess of 15 gallons per minute (0.033 cfs). The permit issued on Application 24757 of Protestant Long authorizes diversion during the irrigation season of 0.21 cfs,

the amount applied for. Any permit issued on Application 24653 should not allow diversion of a greater amount than allowed under Application 24757. To approve Application 24653 for any greater amount would project a false impression of the actual amount of water available in the stream. Whether or not Applicant Long may divert any water from the stream during the irrigation season will depend on an accurate survey to determine ownership at Point of Diversion No. 1.

12. During the winter streamflow at Point of Diversion No. 1 will, at times, be great enough for diversion to offstream storage at a rate of 2.2 cfs, the rate applied for in Application 24653. It is concluded that unappropriated water is available under the priority of Application 24653 at times and in sufficient quantity to satisfy a portion of the water applied for. The total amount to be diverted should be limited to 49 acre-feet per year.

13. The intended use is beneficial.

Environmental Considerations

14. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) and State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

Record in the Matter

15. The record, documents, and other data relied upon in deciding this matter are: Applications 24433, 24653, permitted Applications 10990, 23308, 24018, 24757, licensed Application 22458, and all relevant information on file therewith; Board Decisions 836, 1136, 1138, and 1279; topographic maps published by the United States Geological Survey (USGS) covering the area under consideration; USGS, Water Resources Division, "Water Resources Data for California, Water Year 1977, Volume 2, Pacific Slope Basin from Arroyo Grande to Oregon State Line Except Central Valley", and all appropriate predecessor publications.

Conclusions

16. From the foregoing findings, the Board concludes that a permit should be issued as requested in Application 24653 except the direct diversion portion for the season May 1 to October 1 should be approved for only 0.21 cfs. A permit should be issued in accordance with the following order.

ORDER

IT IS HEREBY ORDERED that Application 24653 be approved in part and that a permit be issued subject to vested rights. The permit shall contain all applicable standard permit terms (5i, 6, 10, 11, 12 and 13)* in addition to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed (a) by direct diversion: (1) 0.21 cubic foot per second from May 1 to October 1 of each year for irrigation purposes; (2) 1,600 gallons per day from January 1 to December 31 of each year for domestic purposes; and (b) by storage, a total of 33 acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year as follows: (1) 15 acre-feet per annum in No. 1 Reservoir, (2) 18 acre-feet per annum in No. 2 Reservoir. The total amount of water to be taken from the source for all uses shall not exceed 49 acre-feet per water year of October 1 to September 30. The maximum rate of diversion to offstream storage from Diversion Point No. 1 shall not exceed 2.2 cubic feet per second.

2. Construction work shall be commenced before December 1, 1981, and shall be completed by December 1, 1983. Complete application of the water to the proposed use shall be made by December 1, 1984.

3. This permit shall not be construed as conferring upon the permittees right of access to Diversion Point No. 1. Before starting construction at Diversion Point No. 1, permittee shall present proof of legal ownership of land at that point or legal right of access thereto.

*The Board maintains a list of standard permit terms.

Copies may be obtained upon request.

4. Permittees shall not exercise any other existing right to the use of water named herein so long as this permit or any license issued pursuant thereto remains in effect.

5. Permittees shall install and maintain outlet pipes of adequate capacity in the dams as near as practicable to the bottom of the natural stream channel in order that water entering the reservoirs which is not authorized for appropriation under this permit may be released.

6. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittees shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board.

7. During years in which Lake Hennessey does not spill, upon request from the City of Napa, permittees shall release water up to the total impounded that diversion season to flow into Lake Hennessey.

8. Permittees shall install and maintain in their reservoirs staff gages meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoirs.

Permittees shall supply the staff gage readings on or about October 1 of each year, verified by the City of Napa or its designated representative, to the State Water Resources Control Board.

Permittees shall allow the City of Napa or its designated representative reasonable access to the reservoirs for the purpose of determining whether water should be released in accordance with this condition. In no event

shall permittees be obligated to release water below the previous October staff gage readings.

Dated: June 19, 1980

/S/ CARLA M. BARD
Carla M. Bard, Chairwoman

/S/ WILLIAM J. MILLER
William J. Miller, Vice Chairman

/S/ L. L. MITCHELL
L. L. Mitchell, Member

/S/ JILL B. DUNLAP
Jill B. Dunlap, Member

/S/ F. K. ALJIBURY
F. K. Aljibury, Member